

## Internal Revenue Service

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Date:

August 26, 2008

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

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Sub 20 =

Sub 21 =

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Sub 25 =

Sub 26 =

Sub 27 =

Sub 28 =

Sub 29 =

Sub 30 =

Newco 1 =

Newco 2 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LP 1 =

Partnership  
Interests =

Shareholder =

Person =

Business A =

Business B =

Business C =

Business D	=
Business E	=
Business F	=
Business G	=
Business H	=
Business I	=
Business J	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year 1	=
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Dear :

This letter responds to your April 15, 2008 request for rulings regarding certain federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transactions"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in

support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding whether the Internal Distributions and External Distributions (as defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are being used principally as a device for the distribution of the earnings and profits of any of the distributing corporations or the controlled corporations (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”)) and § 1.355-2(d), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any of the distributing corporations or the controlled corporations (see § 355(e) and § 1.355-7).

### Summary of Facts

Distributing is a publicly-held corporation and common parent of an affiliated group of corporations. Distributing, through its subsidiaries, engages in, among others, the following businesses: Business A, Business B, Business C, Business D, Business E (including the activities comprising Business J), Business F, Business G and Business H.

As of Date 1, Distributing had outstanding approximately a shares of common stock (“Distributing Common Stock”) (including b shares of Distributing Common Stock issued to service providers in exchange for services, which is subject to a risk of forfeiture and restrictions on transferability (“Restricted Stock”)), c shares of Distributing class B common stock (“Distributing Class B Common Stock”), and d shares of Distributing preferred stock (“Distributing Preferred Stock”).

In general, holders of Distributing Common Stock, Distributing Class B Common Stock and Distributing Preferred Stock vote together as a single class on all matters, including the election of Distributing directors, except that holders of Distributing Common Stock, acting as a single class, are entitled to elect e% of the total number of Distributing directors. Holders of Distributing Common Stock are each entitled to f vote per share, holders of Distributing Class B Common Stock are each entitled to g votes per share, and holders of Distributing Preferred Stock are entitled to h votes per share when voting together as a class.

Distributing intends to eliminate the shares of Distributing Preferred Stock before the External Distributions through a merger of a newly-formed wholly-owned subsidiary of Distributing into Distributing (the “Preferred Merger”). In the Preferred Merger, all shares of Distributing Preferred Stock will be converted into cash.

Shareholder owns, directly or indirectly, i shares of Distributing Common Stock, representing approximately j% of the class. Distributing believes that two investment advisors own, through multiple entities, approximately k% and l%,

respectively, of the Distributing Common Stock outstanding. Shareholder owns, directly or indirectly, all the outstanding shares of Distributing Class B Common Stock. Shareholder and the investment advisors do not actively participate in the management or operations of Distributing, and it is not expected that Shareholder or the investment advisors will actively participate in the management or operations of Distributing, Controlled 1, Controlled 2, Controlled 3 or Controlled 4 (each defined below) or any of their respective subsidiaries after the Proposed Transactions. Shareholder has the right to nominate h directors serving on the Distributing board of directors and, immediately following the External Distributions, will have the right to nominate m% of the directors serving on the board of directors of each Controlled Corporation.

Pursuant to an amended and restated stockholders agreement, Person has an irrevocable proxy to vote all shares of Distributing Common Stock and Distributing Class B Common Stock held by Shareholder and its subsidiaries, except in the case of certain limited matters. Upon completion of the External Distributions, each of the Controlled Corporations (defined below) will have a single class of common stock (*i.e.*, a capital structure that does not replicate Distributing's high vote capital structure (the "High-Vote Structure"). The proxy arrangements with respect to Distributing's stock (the "Proxy Arrangements") will continue in effect but will not be replicated at any of the Controlled Corporations.

Distributing has outstanding \$n of o% senior notes due Date 2 (the "Distributing Notes"). On Date 3, Distributing commenced a tender offer to purchase the Distributing Notes for cash. On Date 4, Distributing entered into an agreement (the "Notes Exchange Agreement") with Sub 8 and a group of institutional holders unaffiliated with Distributing that hold in excess of a majority in aggregate principal amount of the outstanding Distributing Notes (the "Noteholders"). Under the Notes Exchange Agreement, subject to certain conditions, Distributing has agreed to exchange the Sub 8 Notes received in the Sub 8 Note Issuance (defined below) for a portion of the Distributing Notes held by certain of the Noteholders (the "Exchanging Noteholders") and the Noteholders will tender the remaining Distributing Notes held by them in the tender offer.

Controlled 1 is engaged directly and indirectly in Business A. Distributing owns p shares of Controlled 1 class B common stock ("Controlled 1 Class B Common Stock"). Shares of Controlled 1 Class B Common Stock each have q votes per share. Sub 2 owns r shares of Controlled 1 common stock ("Controlled 1 Common Stock"). Shares of Controlled 1 Common Stock each have f vote per share. Controlled 1 wholly owns Sub 1, and Sub 1 wholly owns Sub 2.

Sub 3 is a wholly-owned subsidiary of Controlled 1 that is engaged in Business H. Following the Sub 3 Contribution (defined below), Sub 3 will also be engaged in Business F and Business G. Sub 4 is a wholly-owned subsidiary of Controlled 1. Sub 5 (which holds a s% interest in Sub 6) is a wholly owned subsidiary of Distributing.



Sub 7 is a wholly-owned subsidiary of Distributing that is engaged in Business E. Sub 7 owns t shares of the class A voting stock of Sub 8 ("Sub 8 Class A Common Stock"), a corporation that is engaged in Business B. Distributing owns u shares of Sub 8 class B non-voting common stock ("Sub 8 Class B Common Stock"). Controlled 2 is a newly-formed, wholly-owned subsidiary of Distributing. Following the Controlled 2 Contribution (defined below), Controlled 2 will be engaged, through its subsidiaries, in Business B.

Sub 8 wholly owns Sub 20, which wholly owns Sub 21. Sub 20 owns all of the common stock of Sub 22 and a domestic subsidiary of Sub 21 owns all of the voting preferred stock of Sub 22, which represents g% of the total voting power of Sub 22. Sub 22 wholly owns Sub 23, Sub 25 and Sub 26 and owns y% of Sub 24.

Sub 9 is a wholly-owned subsidiary of Distributing. Sub 9 owns w shares of Sub 10 class A voting common stock ("Sub 10 Class A Common Stock"). Shares of Sub 10 Class A Common Stock each have g votes per share. Sub 7 owns x shares of Sub 10 class B voting common stock ("Sub 10 Class B Common Stock"). Shares of Sub 10 Class B Common Stock each have f vote per share. Sub 10 wholly owns Sub 11, a limited liability company that is characterized as a corporation for federal income tax purposes. Sub 11 owns cc shares (approximately nn%) of Sub 12 common stock and all of the Sub 12 preferred stock (collectively, the "Sub 12 Stock"). The remaining approximately g% of the Sub 12 common stock is restricted stock owned by Sub 12 management. Sub 11 owns a y% interest in LLC 1, a limited liability company that is characterized as a partnership for federal income tax purposes. Sub 11 wholly owns Sub 13, which owns a z% interest in LLC 1. Sub 11 owns a aa% interest in the Partnership Interests (including each of LP 1 and LLC 2). Each of LP 1 and LLC 2 are characterized as partnerships for federal income tax purposes. LLC 3, a limited liability company that is disregarded as an entity separate from LLC 1, owns a bb% interest in the Partnership Interests and wholly owns LLC 4. LLC 2 holds certain minority investments. Sub 14 is a wholly-owned subsidiary of Distributing. LLC 5 will be a newly formed limited liability company that will be disregarded as an entity separate from Distributing for federal income tax purposes.

Newco 1 and Newco 2 are newly-formed, wholly-owned subsidiaries of Sub 13. Controlled 3 is a newly-formed, wholly-owned subsidiary of Distributing. Following the Controlled 3 Contribution (defined below), Controlled 3 will be engaged, through various subsidiaries, in Business C.

Distributing owns pp non-voting common units and dd Series A voting preferred units of Sub 15, a limited liability company characterized as a corporation for federal income tax purposes. Sub 16, a wholly owned subsidiary of Distributing, owns ee Series B voting preferred units of Sub 15. Sub 17 is a wholly-owned subsidiary of Distributing. Controlled 4 is a newly-formed, wholly-owned subsidiary of Distributing. After the Controlled 4 Contribution (defined below), Controlled 4 will be engaged, through its subsidiaries, in Business D.

Controlled 1, Controlled 2, Controlled 3 and Controlled 4 are referred to, collectively, as the “Controlled Corporations.”

Financial information has been submitted that indicates that Business A, Business B, Business C, Business D, Business E, Business F, Business G, and Business H each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years. The portion of those businesses relied upon to satisfy the active trade or business requirement of § 355(b) will be referred to as “Active Business A”, “Active Business B”, “Active Business C”, “Active Business D”, “Active Business E”, “Active Business F”, “Active Business G” and “Active Business H”, respectively.

Following the External Distributions, the board of directors of each of the Controlled Corporations will include f or h members that are directors and/or executives of Distributing.

### **The Proposed Transactions**

In order to obtain certain goals and objectives that the taxpayer has represented are driven by valid corporate business purposes, management of Distributing intends to complete the Proposed Transactions. The Proposed Transactions will consist of the following steps:

#### **The Controlled 1 Distribution and Related Restructuring Steps**

- (i) Sub 2 merges into its sole shareholder, Sub 1 (the “Sub 2 Merger”).
- (ii) Sub 1 merges into its sole shareholder, Controlled 1 (the “Sub 1 Merger”). Following the Sub 1 Merger, Controlled 1 Class B Common Stock will be the only class of Controlled 1 stock outstanding.
- (iii) Controlled 1 (a) contributes the assets and liabilities of Business F to a limited liability company that is disregarded as an entity separate from Controlled 1 for federal income tax purposes and contributes the interests in this limited liability company to Sub 3, (b) contributes certain other businesses and assets held directly or indirectly by it that are intended to be retained by the Distributing group, including a membership interest in a single-member limited liability company that conducts Active Business G and certain intercompany receivables, to Sub 3 ((a) and (b), together, the “Sub 3 Contribution”) and (c) distributes the stock of Sub 3 to Distributing (the “Sub 3 Internal Distribution”). Sub 3 will issue additional shares of Sub 3 stock to Controlled 1 in connection with the Sub 3 Contribution.
- (iv) Controlled 1 (a) borrows cash from one or more unrelated parties and distributes substantially all of the borrowing proceeds to Distributing and (b) distributes existing

intercompany receivables to Distributing ((a) and (b), collectively, the “Controlled 1 Cash Distribution”).

(v) Controlled 1 purchases the stock of Sub 5 from Distributing for cash or cash equivalents.

(vi) The outstanding shares of Controlled 1 are recapitalized and Controlled 1 issues additional shares of Controlled 1 Common Stock to Distributing in preparation for the distribution of Controlled 1 to the public shareholders of Distributing.

(vii) Distributing distributes the Controlled 1 Common Stock *pro rata* to holders of Distributing Common Stock and Distributing Class B Common Stock (the “Controlled 1 Distribution”). In lieu of distributing any fractional shares of Controlled 1 Common Stock to holders of Distributing stock, a distribution agent will aggregate fractional shares into whole shares, sell the whole shares in the open market at prevailing market prices, and distribute the aggregate net cash proceeds of the sale *pro rata* to each holder who otherwise would have been entitled to a fractional share.

#### The Controlled 2 Distribution and Related Restructuring Steps

(viii) Distributing exchanges its u shares of Sub 8 Class B Common Stock for u shares of Sub 8 Class A Common Stock (the “Sub 8 Recapitalization”). Following the Sub 8 Recapitalization, Distributing will own u shares of Sub 8 Class A Common Stock and Sub 7 will own t shares of Sub 8 Class A Common Stock. Sub 7 will therefore possess § 368(c) control of Sub 8.

(ix) To minimize certain state income taxes with respect to the Controlled 2 Distribution: (1) Sub 20 contributes Sub 21 to Sub 22; (2) Sub 22 contributes the following to Sub 23: (i) Sub 24, (ii) Sub 26, (iii) Sub 21, and possibly (iv) Sub 25; and (3) Sub 8, Sub 20 and Sub 22 contribute intercompany receivables, if any, and other investment assets, if any, to Sub 23.

(x) Sub 7 (a) forms LLC 6 and contributes intangible assets, including intellectual property and goodwill, and certain other assets associated with Business J to LLC 6 (the “Business J Contribution”) and (b) distributes the interests in LLC 6 to Distributing (the “Business J Distribution”, together with the Business J Contribution, the “Business J Transfer”). The sole reason for the Business J Transfer is to minimize certain state income taxes with respect to the External Distributions.

(xi) Sub 7 distributes the Sub 8 Class A Common Stock to Distributing (the “Sub 8 Internal Distribution,” together with the Sub 3 Internal Distribution, the “Internal Distributions”).

(xii) Sub 8 borrows from one or more unrelated parties and distributes a portion of the borrowing proceeds and intercompany receivables to Distributing (collectively, the “Sub

8 Cash Distribution"). Sub 8 also issues \$ff in aggregate principal amount of gg% senior notes due Year 1 (the "Sub 8 Notes") to Distributing (the "Sub 8 Note Issuance").

(xiii) Prior to the Controlled 2 Distribution (defined below), Distributing contributes all the Sub 8 Class A Common Stock to Controlled 2 (the "Controlled 2 Contribution").

(xiv) In exchange for the Controlled 2 Contribution, Controlled 2 issues additional shares of Controlled 2 Common Stock to Distributing.

(xv) Distributing distributes the Controlled 2 Common Stock *pro rata* to holders of Distributing Common Stock and Distributing Class B Common Stock (the "Controlled 2 Distribution"). In lieu of distributing any fractional shares of Controlled 2 Common Stock to holders of Distributing stock, a distribution agent will aggregate fractional shares into whole shares, sell the whole shares in the open market at prevailing market prices, and distribute the aggregate net cash proceeds of the sale *pro rata* to each holder who otherwise would have been entitled to receive a fractional share.

(xvi) Following the Controlled 2 Distribution, Distributing transfers, pursuant to the Notes Exchange Agreement, all of the Sub 8 Notes to the Exchanging Noteholders (the "Notes Exchange").

#### The Controlled 3 Distribution and Related Restructuring Steps

(xvii) LLC 3 distributes its bb% interest in the Partnership Interests (including each of LP 1 and LLC 2) and its interest in LLC 4 to LLC 1. The Partnership Interests (including LP 1 and LLC 2) and the membership interests in LLC 4 are collectively referred to as the "Business C Interests."

(xviii) LP 1 distributes intercompany receivables, if any, *pro rata* to LLC 1 and Sub 11.

(xix) LLC 1 distributes the Business C Interests received in step (xvii) *pro rata* to Sub 11 and Sub 13.

(xx) LLC 2 distributes all its assets and liabilities (other than its mm% interest in Sub 27, its oo% interest in Sub 28, its oo% interest in Sub 30 and cash, if any), *pro rata* to Sub 11 (ii%) and Sub 13 (jj%).

(xxi) Sub 13 contributes a f% interest in each of LLC 1 and LLC 2 to Newco 1.

(xxii) Sub 13 contributes a f% interest in the Business C Interests (other than LLC 2) to Newco 2.

(xxiii) Sub 13 merges (the "Sub 13 Merger") into its sole shareholder, Sub 11.

(xxiv) Sub 11 merges (the "Sub 11 Merger") into Sub 10.

(xxv) Sub 10 merges (the “Sub 10 Merger”) into Sub 9. Immediately prior to the Sub 10 Merger, Sub 10 purchases the Sub 10 Class B Common Stock held by Sub 7 in exchange for a note of Sub 10.

(xxvi) Sub 9 converts to a limited liability company or merges into LLC 5 (the “Sub 9 Merger”). The transactions described in steps (xvii) through (xxvi) are collectively referred to as the “Business C Restructuring.”

(xxvii) Controlled 3 borrows cash from one or more unrelated parties and transfers substantially all of the proceeds to Distributing (the “Controlled 3 Cash Distribution”).

(xxviii) LLC 5 transfers the Sub 12 Stock, the stock of Newco 2, and the Business C Interests (other than LLC 2, but including the assets and liabilities distributed by LLC 2 in step (xx)) to Controlled 3, and, upon the receipt of regulatory approvals (following the Controlled 3 Distribution), Distributing transfers the stock of Sub 14 and Sub 29 to Controlled 3 (the “Controlled 3 Contribution”) in exchange for the issuance of additional shares of Controlled 3 common stock directly to Distributing, the assumption by Controlled 3 of liabilities related to Business C, and the Controlled 3 Cash Distribution.

(xxix) Distributing distributes the stock of Controlled 3 (the “Controlled 3 Common Stock”) *pro rata* to holders of Distributing Common Stock and Distributing Class B Common Stock (the “Controlled 3 Distribution”). In lieu of distributing any fractional shares of Controlled 3 Common Stock to holders of Distributing stock, a distribution agent will aggregate fractional shares into whole shares, sell the whole shares in the open market at prevailing market prices, and distribute the aggregate net cash proceeds of the sale *pro rata* to each holder who otherwise would have been entitled to a fractional share.

(xxx) Distributing deposits any cash received in the Controlled 3 Cash Distribution into a segregated account, pending the transfer of all such cash to holders of Distributing Notes in the tender offer, other creditors of Distributing, or shareholders of Distributing, in each case, pursuant to the plan of reorganization.

#### The Controlled 4 Distribution and Related Restructuring Steps

(xxxi) Sub 16 sells its ee Series B voting preferred units of Sub 15 to Distributing for a note.

(xxxii) Distributing contributes intercompany receivables and cash to Sub 15 in exchange for additional Series A voting preferred units of Sub 15.

(xxxiii) Distributing contributes its (a) pp non-voting common units of Sub 15, (b) dd Series A voting preferred units of Sub 15 (plus any Series A voting preferred units received in step (xxxii)) and (c) ee Series B preferred units of Sub 15 to Sub 17 in exchange for common stock of Sub 17 (the “Sub 17 Common Stock”).

(xxxiv) Contemporaneous with step (xxxiii) and pursuant to its commitment to one or more members of Business D senior management ("Business D Management"), Sub 17 issues \$11 of Series A Redeemable Preferred Stock of Sub 17 ("Sub 17 Preferred Stock") to Business D Management as compensation for services. The Sub 17 Preferred Stock has no voting rights and ranks senior to all other classes of capital stock of Sub 17 with respect to liquidating distributions. Each holder of Sub 17 Preferred Stock will make a § 83(b) election with respect to the shares of Sub 17 Preferred Stock issued to such holder.

(xxxv) Distributing contributes all the Sub 17 Common Stock to Controlled 4 (the "Controlled 4 Contribution").

(xxxvi) In exchange for the Controlled 4 Contribution, Controlled 4 issues additional shares of Controlled 4 common stock ("Controlled 4 Common Stock") to Distributing.

(xxxvii) Distributing distributes the Controlled 4 Common Stock *pro rata* to holders of Distributing Common Stock and Distributing Class B Common Stock (the "Controlled 4 Distribution," together with the Controlled 1 Distribution, the Controlled 2 Distribution, and the Controlled 3 Distribution, the "External Distributions"). In lieu of distributing fractional shares of Controlled 4 Common Stock to holders of Distributing stock, a distribution agent will aggregate fractional shares into whole shares, sell the whole shares in the open market at prevailing market prices, and distribute the aggregate net cash proceeds of the sale *pro rata* to each holder who otherwise would have been entitled to a fractional share.

#### Other Related Transactions

(xxxviii) In connection with the External Distributions, Distributing intends to consummate a reverse stock split (the "Reverse Stock Split") to adjust the number of shares of Distributing Common Stock outstanding and to increase the per share trading price of Distributing Common Stock following the External Distributions relative to what the per share trading price of Distributing Common Stock would be if the Reverse Stock Split was not implemented. In the Reverse Stock Split, Distributing would issue f shares of new common stock ("New Distributing Common Stock") for h shares of outstanding Distributing Common Stock, and f shares of new Class B common stock ("New Distributing Class B Common Stock") for h shares of outstanding Distributing Class B Common Stock. Distributing will not issue any fractional share interests in the Reverse Stock Split. In lieu of fractional share interests, each Distributing stockholder who otherwise would be entitled to receive a fractional share interest will receive a cash payment from Distributing.

## **Representations**

### The Sub 3 Contribution and the Sub 3 Internal Distribution

The following representations are made with respect to the Sub 3 Contribution and the Sub 3 Internal Distribution:

(1a) Indebtedness, if any, owed by Sub 3 to Controlled 1 after the Sub 3 Internal Distribution will not constitute stock or securities.

(1b) No part of the consideration to be distributed by Controlled 1 will be received by Distributing as a creditor, employee or in any capacity other than that of a shareholder of Controlled 1.

(1c) The five years of financial information submitted on behalf of the Controlled 1 separate affiliated group as defined in § 355(b)(3)(B) (the “Controlled 1 SAG”) is representative of the present operations of Active Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1d) The five years of financial information submitted on behalf of the Sub 3 separate affiliated group as defined in § 355(b)(3)(B) (the “Sub 3 SAG”) is representative of the present operations of Active Business F, Active Business G and Active Business H, and with regard to such businesses, there have been no substantial operational changes since the date of the last financial statements submitted.

(1e) Neither Active Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Sub 3 Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Controlled 1 SAG, or in connection with the expansion of an existing five-year trade or business.

(1f) Neither Active Business F, Active Business G, nor Active Business H nor control of an entity conducting either of these businesses was acquired during the five-year period ending on the date of the Sub 3 Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Controlled 1 SAG, or in connection with the expansion of an existing five-year trade or business.

(1g) Following the Sub 3 Internal Distribution, the Controlled 1 SAG and the Sub 3 SAG will each continue the active conduct of one or more of its businesses, independently and with its separate employees.

(1h) The Sub 3 Internal Distribution is being carried out for the corporate business purpose of facilitating the Controlled 1 Distribution and is motivated, in whole or substantial part, by this corporate business purpose.

(1i) The Sub 3 Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Controlled 1 or Sub 3 or both.

(1j) The total adjusted basis and the fair market value of the assets transferred to Sub 3 by Controlled 1 each equals or exceeds the sum of: (i) the total liabilities assumed (as determined under § 357(d)) by Sub 3 and (ii) the total amount of money and other property (within the meaning of § 361(b)) received by Controlled 1 and transferred by it to its creditors and shareholders in connection with the plan of reorganization. The liabilities assumed (as determined under § 357(d)) in the Sub 3 Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(1k) The fair market value of the assets transferred by Controlled 1 to Sub 3 will equal or exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Sub 3 in the Sub 3 Contribution, (b) the amount of any liabilities owed to Sub 3 by Controlled 1 (if any) that are discharged or extinguished in the Sub 3 Contribution, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Controlled 1 from Sub 3 in the Sub 3 Contribution. The fair market value of the assets of Sub 3 will exceed the amount of its liabilities immediately after the Sub 3 Contribution.

(1l) No property will be transferred by Controlled 1 to Sub 3 for which an investment credit allowed under § 47 has been or will be claimed.

(1m) No intercorporate debt will exist between Controlled 1 and Sub 3 at the time of, or subsequent to, the Sub 3 Internal Distribution, except for payables arising under transitional arrangements or otherwise in the ordinary course of business.

(1n) Immediately before the Sub 3 Internal Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(1o) At the time of the Sub 3 Internal Distribution, Controlled 1 will not have an excess loss account in the stock of Sub 3.

(1p) Except for any payments that may be made in connection with the separation and distribution agreement (the “SDA”), the tax sharing agreement (the “TSA”), the employee benefits agreement (the “EBA”) or any transitional agreements, which may be



based on cost or cost-plus arrangements, payments made in connection with any continuing transactions between Controlled 1 and its subsidiaries (if any) and Sub 3 and its subsidiaries (if any) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(1q) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(1r) For purposes of § 355(d), immediately after the Sub 3 Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50% or more of the total value of all classes of Controlled 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 3 Internal Distribution.

(1s) For purposes of § 355(d), immediately after the Sub 3 Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Sub 3 stock entitled to vote, or 50% or more of the total value of all classes of Sub 3 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 3 Internal Distribution or (ii) attributable to distributions on Controlled 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 3 Internal Distribution.

(1t) The Sub 3 Internal Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Controlled 1 or Sub 3 (including any predecessor or successor of any such corporation).

(1u) Immediately after the Sub 3 Internal Distribution, either (i) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Controlled 1 or Sub 3, (ii) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the Sub 3 Internal Distribution, or (iii) neither Controlled 1 nor Sub 3 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

#### The Controlled 1 Distribution

The following representations are made with respect to the Controlled 1 Distribution:

(2a) Indebtedness (if any) owed by Controlled 1 to Distributing after the Controlled 1 Distribution will not constitute stock or securities.

(2b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled 1 Common Stock that may be received by holders of Distributing Restricted Stock. Any shares of Controlled 1 Common Stock distributed in the Controlled 1 Distribution as or with respect to Restricted Stock will not represent more than   % of the Controlled 1 Common Stock outstanding.

(2c) The five years of financial information submitted on behalf of the Distributing SAG is representative of the present operations of Active Business E, Active Business F, Active Business G, and Active Business H and, with regard to such businesses, there have been no substantial operational changes since the date of the last financial statement submitted.

(2d) The five years of financial information submitted on behalf of the Controlled 1 SAG is representative of the present operations of Active Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2e) Neither Active Business E, Active Business F, Active Business G, nor Active Business H nor control of an entity conducting any of these businesses was acquired during the five-year period ending on the date of the Controlled 1 Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing SAG, or in connection with the expansion of an existing five-year trade or business.

(2f) Neither Active Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Controlled 1 Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing SAG, or in connection with the expansion of an existing five-year trade or business.

(2g) Following the Controlled 1 Distribution, the Distributing SAG and the Controlled 1 SAG will each continue the active conduct of one or more of its businesses, independently and with its separate employees.

(2h) The Controlled 1 Distribution is being carried out for the corporate business purposes listed below and is motivated, in whole or substantial part, by one or more of these corporate business purpose: (i) to cause the aggregate value of the stock of Distributing and the Controlled Corporations to exceed the pre-distribution value of Distributing's stock, thereby providing Distributing and/or Controlled 1 with separate "currencies" to further their growth through merger and acquisition ("M&A") activity or to better incentivize their respective employees, (ii) to enhance the success of the

separated businesses by enabling Distributing and Controlled 1 to resolve management, systemic or other problems that arise (or are exacerbated) by Distributing's operation of different businesses within a single affiliated group, and (iii) to enable each of Distributing and Controlled 1 to implement a capital structure that is tailored to the needs of the business sector in which it competes.

(2i) The Controlled 1 Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled 1 or both.

(2j) No intercorporate debt will exist between Distributing and Controlled 1 at the time of, or subsequent to, the Controlled 1 Distribution, except for payables arising under transitional arrangements or otherwise in the ordinary course of business.

(2k) Immediately before the Controlled 1 Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled 1 stock or the stock of any direct or indirect subsidiary of Controlled 1 will be included in income immediately before the Controlled 1 Distribution to the extent required by applicable regulations (see § 1.1502-19).

(2l) Except for any payments that may be made in connection with the SDA, TSA, EBA or any transitional agreements, which may be based on cost or cost-plus arrangements, payments made in connection with any continuing transactions between Distributing or any of its subsidiaries and Controlled 1 or any of its subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(2m) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(2n) For purposes of § 355(d), immediately after the Controlled 1 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 1 Distribution.

(2o) For purposes of § 355(d), immediately after the Controlled 1 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50% or more of the total value of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 1

Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 1 Distribution.

(2p) The Controlled 1 Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled 1 (including any predecessor or successor of any such corporation).

(2q) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled 1, (ii) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the Controlled 1 Distribution, or (iii) neither Distributing nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(2r) Any payment of cash in lieu of fractional shares of Controlled 1 Common Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled 1 of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Controlled 1 Distribution to shareholders in lieu of fractional shares of Controlled 1 Common Stock will not exceed one percent of the total consideration that will be distributed in the Controlled 1 Distribution. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of Controlled 1 Common stock.

(2s) Any payment of cash in lieu of fractional shares of New Distributing Common Stock or New Distributing Class B Common Stock in the Reverse Stock Split is solely for the purpose of avoiding the expense and inconvenience to Distributing of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Reverse Stock Split to shareholders in lieu of fractional shares of New Distributing Common Stock and New Distributing Class B Common Stock will not exceed one percent of the Distributing stock issued in the Reverse Stock Split. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of New Distributing Common Stock or New Distributing Class B Common Stock, as applicable.

#### The Sub 8 Internal Distribution

The following representations are made with respect to the Sub 8 Internal Distribution:

(3a) Indebtedness, if any, owed by Sub 8 to Sub 7 after the Sub 8 Internal Distribution will not constitute stock or securities.

(3b) No part of the consideration to be distributed by Sub 7 will be received by Distributing as a creditor, employee or in any capacity other than that of a shareholder of Sub 7.

(3c) The five years of financial information submitted on behalf of the Sub 7 separate affiliated group as defined in § 355(b)(3)(B) (the "Sub 7 SAG") is representative of the present operations of Active Business E and, with regard to such business, there have been no substantial operational changes since the date of the last financial statement submitted.

(3d) The five years of financial information submitted on behalf of the Sub 8 separate affiliated group as defined in § 355(b)(3)(B) (the "Sub 8 SAG") is representative of the present operations of Active Business B and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(3e) Neither Active Business E nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Sub 8 Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Sub 7 SAG, or in connection with the expansion of an existing five-year trade or business.

(3f) Neither Active Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Sub 8 Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Sub 7 SAG, or in connection with the expansion of an existing five-year trade or business.

(3g) Following the Sub 8 Internal Distribution, the Sub 7 SAG and the Sub 8 SAG will each continue the active conduct of its respective businesses, independently and with its separate employees.

(3h) The Sub 8 Internal Distribution is being carried out for the business purpose of facilitating the Controlled 2 Distribution and is motivated, in whole or substantial part, by this corporate business purpose.

(3i) The Sub 8 Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Sub 7 or Sub 8 or both.

(3j) No intercorporate debt will exist between Sub 7 and Sub 8 at the time of, or subsequent to, the Sub 8 Internal Distribution, except for payables arising under transitional arrangements or otherwise in the ordinary course of business.

(3k) Immediately before the Sub 8 Internal Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(3l) At the time of the Sub 8 Internal Distribution, Sub 7 will not have an excess loss account in the stock of Sub 8.

(3m) Except for any payments that may be made in connection with the SDA, TSA, EBA or any transitional agreements, which may be based on cost or cost-plus arrangements, payments made in connection with any continuing transactions between Sub 7 and its subsidiaries (if any) and Sub 8 and its subsidiaries (if any) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(3n) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(3o) For purposes of § 355(d), immediately after the Sub 8 Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Sub 7 stock entitled to vote, or 50% or more of the total value of all classes of Sub 7 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 8 Internal Distribution.

(3p) For purposes of § 355(d), immediately after the Sub 8 Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Sub 8 stock entitled to vote, or 50% or more of the total value of all classes of Sub 8 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 8 Internal Distribution or (ii) attributable to distributions on Sub 7 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Sub 8 Internal Distribution.

(3q) The Sub 8 Internal Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Sub 7 or Sub 8 (including any predecessor or successor of any such corporation).

(3r) Immediately after the Sub 8 Internal Distribution, either (i) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Sub 7 or Sub 8, (ii) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any

disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the Sub 8 Internal Distribution, or (iii) neither Sub 7 nor Sub 8 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

The Controlled 2 Contribution and the Controlled 2 Distribution

The following representations are made with respect to the Controlled 2 Contribution and the Controlled 2 Distribution:

(4a) Other than the Sub 8 Notes held by Distributing prior to the Notes Exchange, indebtedness (if any) owed by Controlled 2 or any of its subsidiaries to Distributing after the Controlled 2 Distribution will not constitute stock or securities.

(4b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled 2 Common Stock that may be received by holders of Distributing Restricted Stock. Any shares of Controlled 2 Common Stock distributed in the Controlled 2 Distribution as or with respect to Restricted Stock will not represent more than 20% of the Controlled 2 Common Stock outstanding.

(4c) The five years of financial information submitted on behalf of the Distributing SAG is representative of the present operations of Active Business E, Active Business F, Active Business G, and Active Business H and, with regard to such businesses, there have been no substantial operational changes since the date of the last financial statement submitted.

(4d) The five years of financial information submitted on behalf of the Controlled 2 separate affiliated group as defined in § 355(b)(3)(B) (the "Controlled 2 SAG") is representative of the present operations of Active Business B, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(4e) Neither Active Business E, Active Business F, Active Business G, nor Active Business H nor control of an entity conducting any of these businesses was acquired during the five-year period ending on the date of the Controlled 2 Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing SAG, or in connection with the expansion of an existing five-year trade or business.

(4f) Neither Active Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Controlled 2 Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole

or in part, except in connection with transfers between members of the Distributing SAG, or in connection with the expansion of an existing five-year trade or business.

(4g) Following the Controlled 2 Distribution, the Distributing SAG and the Controlled 2 SAG will each continue the active conduct of one or more of its businesses independently and with its separate employees.

(4h) The Controlled 2 Distribution is being carried out for the corporate business purposes listed below and is motivated, in whole or substantial part, by one or more of these corporate business purposes: (i) to cause the aggregate value of the stock of Distributing and the Controlled Corporations to exceed the pre-distribution value of Distributing's stock, thereby providing Distributing and/or Controlled 2 with separate "currencies" to further their growth through M&A activity or to better incentivize their respective employees, (ii) to enhance the success of the separated businesses by enabling Distributing and Controlled 2 to resolve management, systemic or other problems that arise (or are exacerbated) by Distributing's operation of different businesses within a single affiliated group, and (iii) to enable each of Distributing and Controlled 2 to implement a capital structure that is tailored to the needs of the business sector in which it competes.

(4i) The Controlled 2 Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled 2 or both.

(4j) The total adjusted basis and the fair market value of the assets transferred to Controlled 2 by Distributing each equals or exceeds the sum of: (i) the total liabilities assumed (as determined under § 357(d)) by Controlled 2 and (ii) the total amount of money and other property (within the meaning of § 361(b)) received by Distributing and transferred by it to its creditors and shareholders in connection with the plan of reorganization. The liabilities assumed (as determined under § 357(d)) in the Controlled 2 Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(4k) The fair market value of the assets transferred by Distributing to Controlled 2 will equal or exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in the transaction, (b) the amount of any liabilities owed to Controlled 2 by Distributing (if any) that are discharged or extinguished in the Controlled 2 Contribution, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled 2 in the Controlled 2 Contribution. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the Controlled 2 Contribution.

(4l) No property will be transferred by Distributing to Controlled 2 for which an investment credit allowed under § 47 has been or will be claimed.



(4m) No intercorporate debt will exist between Distributing and Controlled 2 or any of its subsidiaries at the time of, or subsequent to, the Controlled 2 Distribution, except for (i) the Sub 8 Notes held by Distributing prior to the Notes Exchange or (ii) payables arising under transitional arrangements or otherwise in the ordinary course of business.

(4n) Immediately before the Controlled 2 Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled 2 stock or the stock of any direct or indirect subsidiary of Controlled 2 will be included in income immediately before the Controlled 2 Distribution to the extent required by applicable regulations (see § 1.1502-19).

(4o) Except for any payments that may be made in connection with the SDA, TSA, EBA or any transitional agreements, which may be based on cost or cost-plus arrangements, payments made in connection with all continuing transactions between Distributing and its subsidiaries (on the one hand) and Controlled 2 and its subsidiaries (on the other) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(4p) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(4q) For purposes of § 355(d), immediately after the Controlled 2 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 2 Distribution.

(4r) For purposes of § 355(d), immediately after the Controlled 2 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50% or more of the total value of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 2 Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 2 Distribution.

(4s) The Controlled 2 Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50% or greater interest (within the

meaning of § 355(d)(4)) in Distributing or Controlled 2 (including any predecessor or successor of any such corporation).

(4t) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled 2, (ii) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the Controlled 2 Distribution, or (iii) neither Distributing nor Controlled 2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(4u) Any payment of cash in lieu of fractional shares of Controlled 2 Common Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled 2 of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Controlled 2 Distribution to shareholders in lieu of fractional shares of Controlled 2 Common Stock will not exceed one percent of the total consideration that will be distributed in the Controlled 2 Distribution. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of Controlled 2 Common stock.

(4w) Any payment of cash in lieu of fractional shares of New Distributing Common Stock or New Distributing Class B Common Stock in the Reverse Stock Split is solely for the purpose of avoiding the expense and inconvenience to Distributing of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Reverse Stock Split to shareholders in lieu of fractional shares of New Distributing Common Stock and New Distributing Class B Common Stock will not exceed one percent of the Distributing stock issued in the Reverse Stock Split. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of New Distributing Common Stock or New Distributing Class B Common Stock, as applicable.

#### The Business C Restructuring and the Controlled 3 Distribution

The following representations are made with respect to the Business C Restructuring and the Controlled 3 Distribution:

#### The Business C Restructuring

##### The Sub 13 Merger

(5a) Sub 11 will be the owner of at least 80% of the sole class of Sub 13 stock on the date of adoption of the plan of the Sub 13 Merger, and at all times until the Sub 13 Merger is completed.

- (5b) No shares of Sub 13 stock will have been redeemed during the three years preceding the date of adoption of the plan of the Sub 13 Merger.
- (5c) Upon the Sub 13 Merger, Sub 13 will cease to be a going concern.
- (5d) Sub 13 will not retain any assets following the Sub 13 Merger.
- (5e) Except for (i) the Business C Interests distributed by LLC 1 and (ii) the assets distributed by LLC 2, Sub 13 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of the Sub 13 Merger.
- (5f) No assets of Sub 13 have been, or will be, disposed of by either Sub 13 or Sub 11 except for (i) dispositions in the ordinary course of business, (ii) transfers pursuant to the Sub 11 Merger, (iii) the contribution of a  $\frac{f}{100}$ % interest in the Business C Interests to Newco 2, (iv) the contribution of a  $\frac{f}{100}$ % interest in LLC 2 and LLC 1 to Newco 1, and (v) dispositions occurring more than three years prior to the date of adoption of the plan of the Sub 13 Merger.
- (5g) Other than in connection with the Controlled 3 Contribution described above, the Sub 13 Merger will not be preceded or followed by the reincorporation, transfer or sale of all or a part of the business assets of Sub 13 to another corporation (i) that is the alter ego of Sub 13 and (ii) that, directly or indirectly, will be owned more than 20% in value by persons holding directly or indirectly more than 20% in value of the stock of Sub 13. For purposes of this representation, ownership will be determined immediately after the Sub 13 Merger and by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).
- (5h) Prior to the date of adoption of the plan of the Sub 13 Merger, no assets of Sub 13 will have been distributed in kind, transferred, or sold to Sub 11, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the date of adoption of the plan of the Sub 13 Merger.
- (5i) The fair market value of the assets of Sub 13 will exceed its liabilities on the date of adoption of the plan of, and immediately prior to, the Sub 13 Merger.
- (5j) There is no intercorporate debt existing between Sub 11 and Sub 13 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the plan of the Sub 13 Merger (or, alternatively, if such date is later) except for transactions occurring prior to the date Sub 11 initially acquired Sub 13 stock.
- (5k) Sub 11 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(5l) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to, the Sub 13 Merger have been fully disclosed.

*The Sub 11 Merger*

(6a) Sub 10 will be the owner of at least 80 percent of the sole class of Sub 11 membership interests on the date of adoption of the plan of the Sub 11 Merger, and at all times until the Sub 11 Merger is completed.

(6b) No membership interests of Sub 11 will have been redeemed during the three years preceding the date of adoption of the plan of the Sub 11 Merger.

(6c) Upon the Sub 11 Merger, Sub 11 will cease to be a going concern.

(6d) Sub 11 will not retain any assets following the Sub 11 Merger.

(6e) Except for (i) the distribution by LLC 1 of the Business C Interests, (ii) the distribution by LP 1 of certain intercompany receivables, (iii) the distribution by LLC 2 of certain assets, and (iv) the assets acquired in the Sub 13 Merger, Sub 11 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of the Sub 11 Merger.

(6f) No assets of Sub 11 have been, or will be, disposed of by either Sub 11 or Sub 10 except for (i) dispositions in the ordinary course of business, (ii) assets transferred pursuant to the Sub 10 Merger, and (iii) dispositions occurring more than three years prior to the date of adoption of the plan of the Sub 11 Merger.

(6g) Other than in connection with the Controlled 3 Contribution described above, the Sub 11 Merger will not be preceded or followed by the reincorporation, transfer, or sale of all or a part of the business assets of Sub 11 to another corporation (i) that is the alter ego of Sub 11 and (ii) that, directly or indirectly, will be owned more than 20% in value by persons holding directly or indirectly more than 20% in value of the membership interests of Sub 11. For purposes of this representation, ownership will be determined immediately after the Sub 11 Merger and by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(6h) Prior to the date of adoption of the plan of the Sub 11 Merger, no assets of Sub 11 will have been distributed in kind, transferred, or sold to Sub 10, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the date of adoption of the plan of the Sub 11 Merger.

(6i) The fair market value of the assets of Sub 11 will exceed its liabilities on the date of adoption of, and immediately prior to, the plan of the Sub 11 Merger.

(6j) There is no intercorporate debt existing between Sub 10 and Sub 11 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of the date of adoption of the plan of the Sub 11 Merger (or, alternatively, if such date is later) except for transactions occurring prior to the date Sub 10 initially acquired Sub 11 membership interests.

(6k) Sub 11 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(6l) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to, the Sub 11 Merger have been fully disclosed.

*The Sub 10 Merger*

(7a) Sub 9 will be the owner of at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total value of all classes of stock (excluding non-voting stock that is limited and preferred as to dividends and otherwise meets the requirements of § 1504(a)(4) of the Code) of Sub 10 on the date of adoption of the plan of the Sub 10 Merger, and at all times until the Sub 10 Merger is completed.

(7b) No shares of Sub 10 stock will have been redeemed during the three years preceding the date of adoption of the plan of the Sub 10 Merger.

(7c) Upon the Sub 10 Merger, Sub 10 will cease to be a going concern.

(7d) Sub 10 will not retain any assets following the Sub 10 Merger.

(7e) Except for the assets acquired pursuant to the Sub 11 Merger, Sub 10 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of the Sub 10 Merger.

(7f) No assets of Sub 10 have been, or will be, disposed of by either Sub 10 or Sub 9 except for (i) dispositions in the ordinary course of business, (ii) assets transferred pursuant to the Sub 9 Merger, and (iii) dispositions occurring more than three years prior to the date of adoption of the plan of the Sub 10 Merger.

(7g) Other than in connection with the Controlled 3 Contribution described above, the Sub 10 Merger will not be preceded or followed by the reincorporation, transfer, or sale of all or a part of the business assets of Sub 10 to another corporation (i) that is the alter ego of New U and (ii) that, directly or indirectly, will be owned more than 20% in value by persons holding directly or indirectly more than 20% in value of the Sub 10 stock. For purposes of this representation, ownership will be determined immediately after the

Sub 10 Merger and by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(7h) Prior to the date of adoption of the plan of the Sub 10 Merger, no assets of Sub 10 will have been distributed in kind, transferred, or sold to Sub 9, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the date of adoption of the plan of the Sub 10 Merger.

(7i) The fair market value of the assets of Sub 10 will exceed its liabilities on the date of adoption of, and immediately prior to, the plan of the Sub 10 Merger.

(7j) There is no intercorporate debt existing between Sub 9 and Sub 10 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the plan of the Sub 10 Merger (or, alternatively, if such date is later) except for transactions occurring prior to the date Sub 9 initially acquired Sub 10 stock.

(7k) Sub 9 is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(7l) The fair market value of the consideration received by Sub 9 and by Sub 7 for each share of Sub 10 stock will approximately equal the fair market value of that stock.

(7m) None of the assets being distributed by Sub 10 to Sub 7 (i) has a fair market value greater than its basis in the hands of Sub 10, (ii) is an installment obligation, (iii) is property described in the recapture provisions of the Code, or (iv) is property for which Sub 10 obtained a deduction.

(7n) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to, the Sub 10 Merger have been fully disclosed.

#### The Sub 9 Merger

(8a) Distributing will be the owner of at least 80 percent of the sole class of Sub 9 stock on the date of adoption of the plan of the Sub 9 Merger, and at all times until the Sub 9 Merger is completed.

(8b) No shares of Sub 9 stock will have been redeemed during the three years preceding the date of adoption of the plan of the Sub 9 Merger.

(8c) Upon the Sub 9 Merger, Sub 9 will cease to be a going concern.

(8d) Sub 9 will not retain any assets following the Sub 9 Merger.

(8e) Except for the assets acquired in the Sub 10 Merger, Sub 9 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions

occurring more than three years prior to the date of adoption of the plan of the Sub 9 Merger.

(8f) No assets of Sub 9 have been, or will be, disposed of by either Sub 9 or LLC 5 except for (i) dispositions in the ordinary course of business, (ii) assets transferred to Controlled 3, and (iii) dispositions occurring more than three years prior to the date of adoption of the plan of the Sub 9 Merger.

(8g) Other than in connection with the Controlled 3 Contribution described above, the Sub 9 Merger will not be preceded or followed by the reincorporation, transfer, or sale of all or a part of the business assets of Sub 9 to another corporation (i) that is the alter ego of Sub 9 and (ii) that, directly or indirectly, will be owned more than 20% in value by persons holding directly or indirectly more than 20% in value of the stock of Sub 9. For purposes of this representation, ownership will be determined immediately after the Sub 9 Merger and by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(8h) Prior to the date of adoption of the plan of the Sub 9 Merger, no assets of Sub 9 will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the date of adoption of the plan of the Sub 9 Merger.

(8i) The fair market value of the assets of Sub 9 will exceed its liabilities on the date of adoption of the plan of, and immediately prior to, the Sub 9 Merger.

(8j) There is no intercorporate debt existing between Distributing and Sub 9 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the plan of the Sub 9 Merger (or, alternatively, if such date is later) except for transactions occurring prior to the date Distributing was treated as initially acquiring Sub 9 stock.

(8k) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

(8l) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with or in any way related to, the Sub 9 Merger have been fully disclosed.

#### The Controlled 3 Contribution and the Controlled 3 Distribution

(9a) Indebtedness (if any) owed by Controlled 3 to Distributing after the Controlled 3 Distribution will not constitute stock or securities.

(9b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder

of Distributing, except for shares of Controlled 3 Common Stock that may be received by holders of Distributing Restricted Stock. Any shares of Controlled 3 Common Stock distributed in the Controlled 3 Distribution as or with respect to Restricted Stock will not represent more than 20% of the Controlled 3 Common Stock outstanding.

(9c) The five years of financial information submitted on behalf of the Distributing SAG is representative of the present operations of Active Business E, Active Business F, Active Business G, and Active Business H and, with regard to such businesses, there have been no substantial operational changes since the date of the last financial statement submitted.

(9d) The five years of financial information submitted on behalf of the Controlled 3 separate affiliated group as defined in § 355(b)(3)(B) (the “Controlled 3 SAG”) is representative of the present operations of Active Business C, and with regard to such business, there have been no substantial operational changes since the date of the last financial statement submitted.

(9e) Neither Active Business E, Active Business F, Active Business G, nor Active Business H nor control of an entity conducting any of these businesses was acquired during the five-year period ending on the date of the Controlled 3 Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing SAG, or in connection with the expansion of an existing five-year trade or business.

(9f) Neither Active Business C nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Controlled 3 Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing SAG, or in connection with the expansion of an existing five-year trade or business.

(9g) Following the Controlled 3 Distribution, the Distributing SAG and the Controlled 3 SAG will each continue the active conduct of one or more of its business(es), independently and with its separate employees.

(9h) The Controlled 3 Distribution is being carried out for the corporate business purposes listed below and is motivated, in whole or substantial part, by one or more of these corporate business purposes: (i) to cause the aggregate value of the stock of Distributing and the Controlled Corporations to exceed the pre-distribution value of Distributing’s stock, thereby providing Distributing and/or Controlled 3 with separate “currencies” to further their growth through M&A activity or to better incentivize their respective employees, (ii) to enhance the success of the separated businesses by enabling Distributing and Controlled 3 to resolve management, systemic or other problems that arise (or are exacerbated) by Distributing’s operation of different businesses within a single affiliated group, and (iii) to enable each of Distributing and



Controlled 3 to implement a capital structure that is tailored to the needs of the business sector in which it competes.

(9i) The Controlled 3 Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled 3 or both.

(9j) The total adjusted basis and the fair market value of the assets transferred to Controlled 3 by Distributing each equals or exceeds the sum of: (i) the total liabilities assumed (as determined under § 357(d)) by Controlled 3 and (ii) the total amount of money and other property (within the meaning of § 361(b)) received by Distributing and transferred by it to its creditors and shareholders in connection with the plan of reorganization. The liabilities assumed (as determined under § 357(d)) in the Controlled 3 Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(9k) The fair market value of the assets transferred by Distributing to Controlled 3 will equal or exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 3 in the Controlled 3 Contribution, (b) the amount of any liabilities owed to Controlled 3 by Distributing (if any) that are discharged or extinguished in the Controlled 3 Contribution, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled 3 in the Controlled 3 Contribution. The fair market value of the assets of Controlled 3 will exceed the amount of its liabilities immediately after the Controlled 3 Contribution.

(9l) Within kk months following the date of the Controlled 3 Distribution, Distributing will transfer the cash received in the Controlled 3 Cash Distribution (a) to Noteholders pursuant to the tender offer, or (b) to other creditors and/or shareholders of Distributing pursuant to the plan of reorganization.

(9m) No property will be transferred by Distributing to Controlled 3 for which an investment credit allowed under § 47 has been or will be claimed.

(9n) No indebtedness between Distributing (and its subsidiaries) and Controlled 3 (and its subsidiaries) has been or will be cancelled in connection with the Controlled 3 Distribution.

(9o) No intercorporate debt will exist between Distributing and Controlled 3 at the time of, or subsequent to, the Controlled 3 Distribution except for payables arising under transitional arrangements or otherwise in the ordinary course of business.

(9p) Immediately before the Controlled 3 Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect

before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled 3 stock or the stock of any direct or indirect subsidiary of Controlled 3 will be included in income immediately before the Controlled 3 Distribution to the extent required by applicable regulations (see § 1.1502-19).

(9q) Except for any payments that may be made in connection with the SDA, TSA, EBA or any transitional agreements, which may be based on cost or cost-plus arrangements, payments made in connection with all continuing transactions between Distributing or any of its subsidiaries and Controlled 3 or any of its subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(9r) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(9s) For purposes of § 355(d), immediately after the Controlled 3 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 3 Distribution.

(9t) For purposes of § 355(d), immediately after the Controlled 3 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 3 stock entitled to vote, or 50% or more of the total value of all classes of Controlled 3 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 3 Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 3 Distribution.

(9u) The Controlled 3 Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled 3 (including any predecessor or successor of any such corporation).

(9v) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled 3, (ii) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the

Controlled 3 Distribution, or (iii) neither Distributing nor Controlled 3 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(9w) Any payment of cash in lieu of fractional shares of Controlled 3 Common Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled 3 of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Controlled 3 Distribution to shareholders in lieu of fractional shares of Controlled 3 Common Stock will not exceed one percent of the total consideration that will be distributed in the Controlled 3 Distribution. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of Controlled 3 stock.

(9x) Any payment of cash in lieu of fractional shares of New Distributing Common Stock or New Distributing Class B Common Stock in the Reverse Stock Split is solely for the purpose of avoiding the expense and inconvenience to Distributing of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Reverse Stock Split to shareholders in lieu of fractional shares of New Distributing Common Stock and New Distributing Class B Common Stock will not exceed one percent of the Distributing stock issued in the Reverse Stock Split. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of New Distributing Common Stock or New Distributing Class B Common Stock, as applicable.

#### The Controlled 4 Contribution and the Controlled 4 Distribution

The following representations are made with respect to the Controlled 4 Contribution and the Controlled 4 Distribution:

(10a) The indebtedness (if any) owed by Controlled 4 to Distributing after the Controlled 4 Distribution will not constitute stock or securities.

(10b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled 4 Common Stock that may be received by holders of Distributing Restricted Stock. Any shares of Controlled 4 Common Stock distributed in the Controlled 4 Distribution as or with respect to Restricted Stock will not represent more than 20% of the Controlled 4 Common Stock outstanding.

(10c) The five years of financial information submitted on behalf of the Distributing SAG is representative of the present operations of Active Business E, Active Business F, Active Business G, and Active Business H and, with regard to such businesses, there have been no substantial operational changes since the date of the last financial statement submitted.

(10d) The five years of financial information submitted on behalf of the Controlled 4 separate affiliated group as defined in § 355(b)(3)(B) (the “Controlled 4 SAG”) is representative of the present operations of Active Business D, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(10e) Neither Active Business E, Active Business F, Active Business G, nor Active Business H nor control of an entity conducting any of these businesses was acquired during the five-year period ending on the date of the Controlled 4 Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing SAG, or in connection with the expansion of an existing five-year trade or business.

(10f) Neither Active Business D nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Controlled 4 Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of the Distributing SAG, or in connection with the expansion of an existing five-year trade or business.

(10g) Following the Controlled 4 Distribution, the Distributing SAG and the Controlled 4 SAG will each continue the active conduct of one or more of its businesses, independently and with its separate employees.

(10h) The Controlled 4 Distribution is being carried out for the corporate business purposes listed below and is motivated, in whole or substantial part, by one or more of these corporate business purposes: (i) to cause the aggregate value of the stock of Distributing and the Controlled Corporations to exceed the pre-distribution value of Distributing’s stock, thereby providing Distributing and/or Controlled 4 with separate “currencies” to further their growth through M&A activity or to better incentivize their respective employees, (ii) to enhance the success of the separated businesses by enabling Distributing and Controlled 4 to resolve management, systemic or other problems that arise (or are exacerbated) by Distributing’s operation of different businesses within a single affiliated group, and (iii) to enable each of Distributing and Controlled 4 to implement a capital structure that is tailored to the needs of the business sector in which it competes.

(10i) The Controlled 4 Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled 4 or both.

(10j) The total adjusted basis and the fair market value of the assets transferred to Controlled 4 by Distributing each equals or exceeds the sum of: (i) the total liabilities assumed (as determined under § 357(d)) by Controlled 4 and (ii) the total amount of money and other property (within the meaning of § 361(b)) received by Distributing and transferred by it to its creditors and shareholders in connection with the plan of reorganization. The liabilities assumed (as determined under § 357(d)) in the Controlled

4 Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(10k) The fair market value of the assets transferred by Distributing to Controlled 4 will equal or exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 4 in the Controlled 4 Contribution, (b) the amount of any liabilities owed to Controlled 4 by Distributing (if any) that are discharged or extinguished in the Controlled 4 Contribution, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled 4 in the Controlled 4 Contribution. The fair market value of the assets of Controlled 4 will exceed the amount of its liabilities immediately after the Controlled 4 Contribution.

(10l) No property will be transferred by Distributing to Controlled 4 for which an investment credit allowed under § 47 has been or will be claimed.

(10m) No intercorporate debt will exist between Distributing and Controlled 4 at the time of, or subsequent to, the Controlled 4 Distribution except for payables arising under transitional agreements or otherwise in the ordinary course of business.

(10n) Immediately before the Controlled 4 Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled 4 stock or the stock of any direct or indirect subsidiary of Controlled 4 will be included in income immediately before the Controlled 4 Distribution to the extent required by applicable regulations (see § 1.1502-19).

(10o) Except for any payments that may be made in connection with (i) the SDA, TSA, EBA or any transitional agreements, which may be based on cost or cost-plus arrangements, or (ii) the Existing JV Service Agreement, payments made in connection with all continuing transactions between Distributing or any of its subsidiaries and Controlled 4 or any of its subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(10p) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(10q) For purposes of § 355(d), immediately after the Controlled 4 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of all classes of Distributing stock, that was acquired by

purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 4 Distribution.

(10r) For purposes of § 355(d), immediately after the Controlled 4 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled 4 stock entitled to vote, or 50% or more of the total value of all classes of Controlled 4 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 4 Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 4 Distribution.

(10s) The Controlled 4 Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled 4 (including any predecessor or successor of any such corporation).

(10t) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled 4, (ii) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the Controlled 4 Distribution, or (iii) neither Distributing nor Controlled 4 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(10u) Any payment of cash in lieu of fractional shares of Controlled 4 stock is solely for the purpose of avoiding the expense and inconvenience to Controlled 4 of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Controlled 4 Distribution to shareholders in lieu of fractional shares of Controlled 4 Common Stock will not exceed one percent of the total consideration that will be distributed in the Controlled 4 Distribution. The fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of Controlled 4 Common Stock.

(10v) Any payment of cash in lieu of fractional shares of New Distributing Common Stock or New Distributing Class B Common Stock in the Reverse Stock Split is solely for the purpose of avoiding the expense and inconvenience to Distributing of issuing and maintaining fractional shares and will not represent separately bargained-for consideration. It is intended that the total cash paid in the Reverse Stock Split to shareholders in lieu of fractional shares of New Distributing Common Stock and New Distributing Class B Common Stock will not exceed one percent of the Distributing stock issued in the Reverse Stock Split. The fractional share interests of each Distributing

shareholder will be aggregated, and it is intended that no shareholder will receive cash in an amount equal to or greater than the value of one share of New Distributing Common Stock or New Distributing Class B Common Stock, as applicable.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Proposed Transactions:

#### The Sub 3 Contribution and the Sub 3 Internal Distribution

1. The Sub 3 Contribution, together with the Sub 3 Internal Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Controlled 1 and Sub 3 will each be a “party to a reorganization” under § 368(b).
2. No gain or loss will be recognized by Controlled 1 on the Sub 3 Contribution (§§ 357(a) and 361(a)).
3. No gain or loss will be recognized by Sub 3 on the Sub 3 Contribution (§ 1032(a)).
4. The basis of each asset received by Sub 3 will equal the basis of that asset in the hands of Controlled 1 immediately before its transfer (§ 362(b)).
5. The holding period of each asset received by Sub 3 will include the period during which that asset was held by Controlled 1 (§ 1223(2)).
6. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on the Sub 3 Internal Distribution (§ 355(a)(1)), other than an amount equal to the fair market value of the property received in the Controlled 1 Cash Distribution which will be treated as a distribution to which § 301 applies by reason of § 356(b).
7. No gain or loss will be recognized by Controlled 1 on the Sub 3 Internal Distribution (§ 361(c)(1)).
8. The aggregate basis of the stock of Controlled 1 and of the stock of Sub 3 in the hands of Distributing will equal the aggregate basis of the stock of Controlled 1 held immediately before the Sub 3 Internal Distribution, adjusted as required by §§ 358(a)(1)(A) and (B).
9. The holding period of the stock of Sub 3 received by Distributing in the Sub 3 Internal Distribution will include the holding period of the Controlled 1 stock with respect to which the distribution will be made, provided the Controlled 1 stock is held as a capital asset by Distributing on the date of the Sub 3 Internal Distribution (§ 1223(1)).

10. Earnings and profits will be allocated between Controlled 1 and Sub 3 in accordance with § 312(h), § 1.312-10(a) and 1.1502-33(f)(2).

The Controlled 1 Distribution

11. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing on the Controlled 1 Distribution (§ 355(a)(1)).

12. No gain or loss will be recognized by Distributing on the Controlled 1 Distribution (§ 355(c)).

13. The aggregate basis of the stock of Distributing and of the stock of Controlled 1 in the hands of the shareholders of Distributing will equal the aggregate basis of the stock of Distributing held immediately before the Controlled 1 Distribution, allocated between the stock of Distributing and the stock of Controlled 1 in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).

14. The holding period of the stock of Controlled 1 received by the shareholders of Distributing in the Controlled 1 Distribution will include the holding period of the Distributing stock with respect to which the distribution will be made, provided such Distributing stock is held as a capital asset by the shareholders of Distributing on the date of the Controlled 1 Distribution (§ 1223(1)).

15. Earnings and profits will be allocated between Distributing and Controlled 1 in accordance with § 312(h)(10) and §§ 1.312-10(a) and 1.1502-33(e)(3).

16. A shareholder who receives cash in lieu of fractional shares of Controlled 1 Common Stock, New Distributing Common Stock or New Distributing Class B Common Stock, as applicable, will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above, and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional shares of stock would be held as a capital asset on the date of the Controlled 1 Distribution (§§ 1221 and 1222).

17. The absence of the High-Vote Structure and Proxy Arrangements with respect to the Controlled 1 Common Stock will not be taken into account for purposes of determining whether one or more persons acquires a 50% or greater interest in Controlled 1 as part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Controlled 1 Distribution.

18. Except with respect to Shareholder, the receipt of cash in lieu of fractional shares in connection with the Controlled 1 Distribution will not be taken into account in the § 355(e) analysis.



19. Following the Controlled 1 Distribution, Controlled 1 will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled 1 and its direct and indirect subsidiaries that are “includible corporations” (within the meaning of § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled 1 as the common parent.

20. Payments made between Distributing and Controlled 1 and their respective affiliates under the SDA, TSA, EBA or Transition Services Agreement (the “Separation Agreements”) regarding liabilities, indemnities or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Controlled 1 Distribution or for a taxable period beginning before and ending after the Controlled 1 Distribution, and (ii) will not become fixed and ascertainable until after the Controlled 1 Distribution, will be treated as occurring immediately before the Controlled 1 Distribution (see *Arrowsmith v. Comm’r.*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

#### The Sub 8 Internal Distribution

21. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on the Sub 8 Internal Distribution (§ 355(a)(1)), other than an amount equal to the fair market value of the property received in the Business J Distribution which will be treated as a distribution to which § 301 applies by reason of § 356(b).

22. No gain or loss will be recognized by Sub 7 on the Sub 8 Internal Distribution (§ 355(c)). However, Sub 7 will recognize gain on the Business J Distribution to the extent that the fair market value of the LLC 6 assets transferred exceeds Sub 7’s basis of such assets (§ 311(b)).

23. The aggregate basis of the Sub 7 and Sub 8 stock in the hands of Distributing will equal the aggregate basis of the stock of Sub 7 held immediately before the Sub 8 Internal Distribution, adjusted as required by §§ 358(a)(1)(A) and (B).

24. The holding period of the stock of Sub 8 received by Distributing in the Sub 8 Internal Distribution will include the holding period of the Sub 7 stock with respect to which the distribution will be made, provided the Sub 7 stock is held as a capital asset by Distributing on the date of the Sub 8 Internal Distribution (§ 1223(1)).

25. Earnings and profits will be allocated between Sub 7 and Sub 8 in accordance with § 312(h) and §§ 1.312-10(b) and 1.1502-33(f)(2).

The Controlled 2 Contribution and the Controlled 2 Distribution

26. The Controlled 2 Contribution, together with the Controlled 2 Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled 2 will each be a “party to a reorganization” under § 368(b).
27. No gain or loss will be recognized by Distributing on the Controlled 2 Contribution (§§ 357(a) and 361(a)).
28. No gain or loss will be recognized by Controlled 2 on the Controlled 2 Contribution (§ 1032(a)).
29. The basis of each asset received by Controlled 2 will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
30. The holding period of each asset received by Controlled 2 will include the period during which that asset was held by Distributing (§ 1223(2)).
31. No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing on the Controlled 2 Distribution (§ 355(a)(1)).
32. No gain or loss will be recognized by Distributing on the Controlled 2 Distribution (§ 361(c)(1)).
33. The aggregate basis of the Distributing and Controlled 2 stock in the hands of the shareholders of Distributing will equal the aggregate basis of the stock of Distributing held immediately before the Controlled 2 Distribution, allocated between the stock of Distributing and the stock of Controlled 2 in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).
34. The holding period of the Controlled 2 stock received by the shareholders of Distributing in the Controlled 2 Distribution will include the holding period of the Distributing stock with respect to which the distribution will be made, provided the Distributing stock is held as a capital asset by the shareholders of Distributing on the date of the Controlled 2 Distribution (§ 1223(1)).
35. Earnings and profits will be allocated between Distributing and Controlled 2 in accordance with § 312(h)(10) and §§ 1.312-10(a) and 1.1502-33(e)(3).
36. A shareholder who receives cash in lieu of fractional shares of Controlled 2 Common Stock, New Distributing Common Stock or New Distributing Class B Common Stock, as applicable, will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above, and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional shares of stock would be held as a capital asset on the date of the Controlled 2 Distribution (§§ 1221 and 1222).

37. The absence of the High-Vote Structure and Proxy Arrangements with respect to the Controlled 2 Common Stock will not be taken into account for purposes of determining whether one or more persons acquires a 50% or greater interest in Controlled 2 as part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Controlled 2 Distribution.

38. Except with respect to Shareholder, the receipt of cash in lieu of fractional shares in connection with the Controlled 2 Distribution will not be taken into account in the § 355(e) analysis.

39. The Sub 8 Cash Distribution and the Sub 8 Note Issuance will each qualify as a distribution by Sub 8 to Distributing within the meaning of § 301.

40. Distributing and other members of Distributing's affiliated group will not recognize any income, gain, loss, or deduction with respect to the Sub 8 Notes or the exchange thereof for Distributing Notes, other than any (i) amount of income, gain, loss, or deduction that offsets Sub 8's corresponding amount of income, gain, loss or deduction upon the deemed satisfaction of the Sub 8 Notes, (ii) deductions attributable to the fact that the Distributing Notes may be redeemed at a premium, (iii) income attributable to the fact that the Distributing Notes may be redeemed at a discount, (iv) interest expense accrued with respect to the Distributing Notes, and (v) income, gain, deductions or loss realized on the transfer of the Sub 8 Notes in exchange for Distributing Notes in the Notes Exchange attributable to appreciation or depreciation of the Sub 8 Notes after the time they are acquired by and prior to their disposition by Distributing.

41. Following the Controlled 2 Distribution, Controlled 2 will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled 2 and its direct and indirect subsidiaries that are "includible corporations" (within the meaning of § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled 2 as the common parent.

42. Payments made between Distributing and Controlled 2 and their respective affiliates under the Separation Agreements regarding liabilities, indemnities or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Controlled 2 Distribution or for a taxable period beginning before and ending after the Controlled 2 Distribution, and (ii) will not become fixed and ascertainable until after the Controlled 2 Distribution, will be treated as occurring immediately before the Controlled 2 Distribution (see *Arrowsmith v. Comm'r.*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

#### The Business C Restructuring and the Controlled 3 Distribution

##### The Sub 13 Merger

- 43. The Sub 13 Merger will be treated as a complete liquidation under § 332.
- 44. No gain or loss will be recognized by Sub 11 in the Sub 13 Merger (§ 332(a)).
- 45. No gain or loss will be recognized by Sub 13 in the Sub 13 Merger (§§ 336(d)(3) and 337(a)).
- 46. Except as otherwise provided in § 334(b), Sub 11's basis in each asset received from Sub 13 will be the same as the basis of that asset in the hands of Sub 13 immediately before the Sub 13 Merger (§ 334(b)(1)).
- 47. Sub 11's holding period in each asset received from Sub 13 in the Sub 13 Merger will include the period during which that asset was held by Sub 13 (§ 1223(2)).
- 48. Sub 11 will succeed to and take into account as of the close of the effective date of the Sub 13 Merger the items of Sub 13 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

*The Sub 11 Merger*

- 49. The Sub 11 Merger will be treated as a complete liquidation under § 332.
- 50. No gain or loss will be recognized by Sub 10 in the Sub 11 Merger (§ 332(a)).
- 51. No gain or loss will be recognized by Sub 11 in the Sub 11 Merger (§§ 336(d)(3) and 337(a)).
- 52. Except as otherwise provided in § 334(b), Sub 10's basis in each asset received from Sub 11 will be the same as the basis of that asset in the hands of Sub 11 immediately before the Sub 11 Merger (§ 334(b)(1)).
- 53. Sub 10's holding period in each asset received from Sub 11 in the Sub 11 Merger will include the period during which that asset was held by Sub 11 (§ 1223(2)).
- 54. Sub 10 will succeed to and take into account as of the close of the effective date of the Sub 11 Merger the items of Sub 11 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

*The Sub 10 Merger*

- 55. The Sub 10 Merger will be treated as a complete liquidation under § 332.
- 56. No gain or loss will be recognized by Sub 9 in the Sub 10 Merger (§ 332(a)).

57. No gain or loss will be recognized by Sub 10 in the Sub 10 Merger (§§ 336(d)(3) and 337(a)).

58. Except as otherwise provided in § 334(b), Sub 9's basis in each asset received from Sub 10 will be the same as the basis of that asset in the hands of Sub 10 immediately before the Sub 10 Merger (§ 334(b)(1)).

59. Sub 9's holding period in each asset received from Sub 10 in the Sub 10 Merger will include the period during which that asset was held by Sub 10 (§ 1223(2)).

60. Sub 9 will succeed to and take into account as of the close of the effective date of the Sub 10 Merger the items of Sub 10 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

#### The Sub 9 Merger

61. The Sub 9 Merger will be treated as a complete liquidation under § 332.

62. No gain or loss will be recognized by Distributing in the Sub 9 Merger (§ 332(a)).

63. No gain or loss will be recognized by Sub 9 in the Sub 9 Merger (§§ 336(d)(3) and 337(a)).

64. Except as otherwise provided in § 334(b), Distributing's basis in each asset received from Sub 9 will be the same as the basis of that asset in the hands of Sub 9 immediately before the Sub 9 Merger (§ 334(b)(1)).

65. Distributing's holding period in each asset received from Sub 9 in the Sub 9 Merger will include the period during which that asset was held by Sub 9 (§ 1223(2)).

66. Distributing will succeed to and take into account as of the close of the effective date of the Sub 9 Merger the items of Sub 9 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).

#### The Controlled 3 Contribution and the Controlled 3 Distribution

67. The Controlled 3 Contribution, together with the Controlled 3 Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled 3 will each be a "party to a reorganization" under § 368(b).

68. No gain or loss will be recognized by Distributing on the Controlled 3 Contribution (§§ 357(a), 361(a) and 361(b)(3)).

69. No gain or loss will be recognized by Controlled 3 on the Controlled 3 Contribution (§ 1032(a)).
70. The basis of each asset received by Controlled 3 will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
71. The holding period of each asset received by Controlled 3 will include the period during which that asset was held by Distributing (§ 1223(2)).
72. No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing on their receipt solely of Controlled 3 Common Stock in the Controlled 3 Distribution (§ 355(a)). Any cash distributed to shareholders of Distributing will be treated as a distribution of property to which § 301 applies by reason of § 356(b).
73. The aggregate basis of the Distributing stock and the stock of Controlled 3 in the hands of each Distributing shareholder after the Controlled 3 Distribution will equal the basis of the Distributing stock held by the shareholder immediately before the Controlled 3 Distribution, decreased by the amount of cash (if any) received by such shareholder in the transaction and increased by the amount of such cash (if any) treated as a dividend to such shareholder (§§ 358(a)(1) and (b); § 358(c)). The aggregate basis will be allocated between the Distributing stock and Controlled 3 stock in proportion to the fair market value of each immediately after the Controlled 3 Distribution in accordance with § 1.358-2(a) (§ 358(b)(2)).
74. The holding period of the stock of Controlled 3 received by the shareholders of Distributing in the Controlled 3 Distribution will include the holding period of the Distributing stock with respect to which the distribution will be made, provided the Distributing stock is held as a capital asset by the shareholders of Distributing on the date of the Controlled 3 Distribution (§ 1223(1)).
75. No gain or loss will be recognized by Distributing on the Controlled 3 Distribution (§ 361(c)(1)).
76. Earnings and profits will be allocated between Distributing and Controlled 3 in accordance with § 312(h)(10) and §§ 1.312-10(a) and 1.1502-33(e)(3).
77. A shareholder who receives cash in lieu of fractional shares of Controlled 3 Common Stock, New Distributing Common Stock, or New Distributing Class B Common Stock, as applicable, will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above, and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional shares of stock would be held as a capital asset on the date of the Controlled 3 Distribution (§§ 1221 and 1222).

78. The absence of the High-Vote Structure or the Proxy Arrangements with respect to the Controlled 3 Common Stock will not be taken into account for purposes of determining whether one or more persons acquires a 50% or greater interest in Controlled 3 as part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Controlled 3 Distribution.

79. Except with respect to Shareholder, the receipt of cash in lieu of fractional shares in connection with the Controlled 3 Distribution will not be taken into account in the § 355(e) analysis.

80. No gain or loss will be recognized by Distributing on the Controlled 3 Cash Distribution (§§ 361(a) and 361(b)(3)).

81. Following the Controlled 3 Distribution, Controlled 3 will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled 3 and its direct and indirect subsidiaries that are “includible corporations” (within the meaning of § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled 3 as the common parent.

82. Payments made between Distributing and Controlled 3 and their respective affiliates under the Separation Agreements regarding liabilities, indemnities or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Controlled 3 Distribution or for a taxable period beginning before and ending after the Controlled 3 Distribution, and (ii) will not become fixed and ascertainable until after the Controlled 3 Distribution, will be treated as occurring immediately before the Controlled 3 Distribution (see *Arrowsmith v. Comm’r.*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

#### The Controlled 4 Contribution and the Controlled 4 Distribution

83. The Controlled 4 Contribution, together with the Controlled 4 Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled 4 will each be a “party to a reorganization” under § 368(b).

84. No gain or loss will be recognized by Distributing on the Controlled 4 Contribution (§§ 357(a) and 361(a)).

85. No gain or loss will be recognized by Controlled 4 on the Controlled 4 Contribution (§ 1032(a)).

86. The basis of each asset received by Controlled 4 will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

87. The holding period of each asset received by Controlled 4 will include the period during which that asset was held by Distributing (§ 1223(2)).

88. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing on the Controlled 4 Distribution (§ 355(a)(1)).

89. No gain or loss will be recognized by Distributing on the Controlled 4 Distribution (§ 361(c)(1)).

90. The aggregate basis of the Distributing and Controlled 4 stock in the hands of the shareholders of Distributing will equal the aggregate basis of the stock of Distributing held immediately before the Controlled 4 Distribution, allocated between the Distributing and the Controlled 4 stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b)(2) and 358(c)).

91. The holding period of the Controlled 4 stock received by the shareholders of Distributing in the Controlled 4 Distribution will include the holding period of the Distributing stock with respect to which the distribution will be made, provided the Distributing stock is held as a capital asset by the shareholders of Distributing on the date of the Controlled 4 Distribution (§ 1223(1)).

92. Earnings and profits will be allocated between Distributing and Controlled 4 in accordance with § 312(h)(10) and §§ 1.312-10(a) and 1.1502-33(e)(3).

93. A shareholder who receives cash in lieu of fractional shares of Controlled 4 Common Stock, New Distributing Common Stock or New Distributing Class B Common Stock, as applicable, will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above, and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional shares of stock would be held as a capital asset on the date of the Controlled 4 Distribution (§§ 1221 and 1222).

94. Following the Controlled 4 Distribution, Controlled 4 will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled 4 and its direct and indirect subsidiaries that are “includible corporations” (within the meaning of § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled 4 as the common parent.

95. Payments made between Distributing and Controlled 4 and their respective affiliates under the Separation Agreements regarding liabilities, indemnities or other



obligations that (i) have arisen or will arise for a taxable period ending on or before the Controlled 4 Distribution or for a taxable period beginning before and ending after the Controlled 4 Distribution, and (ii) will not become fixed and ascertainable until after the Controlled 4 Distribution, will be treated as occurring immediately before the Controlled 4 Distribution (see *Arrowsmith v. Comm'r.*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

### **Caveats**

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

In particular, no opinion is expressed regarding: (i) whether the Internal Distributions and External Distributions satisfy the business purpose requirement of § 1.355-2(b); (ii) whether the Internal Distributions and External Distributions are being used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the Internal Distributions and External Distributions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7); (iv) the federal income tax treatment of steps (i), (ii), (v), (vi), (viii), (ix), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxxi), (xxxii), (xxxiii), (xxxiv), and (xxxviii); (v) the federal income tax treatment of the Preferred Merger, and (vi) the potential application of § 482 to any payments made in connection with any transitional agreements which may be based on cost or cost-plus arrangements.

### **Procedural Statements**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income return for which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel (Corporate)

CC: